IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO.875 OF 2007

M/s.Swami Krupa Developers ...Appellant

Versus

Ravindra Pilankar ...Respondent

Smt Anjali N. Helekar for the Appellant.

Shri A.S.Desai for the Respondent.

CORAM : ABHAY S.OKA, J.
DATED : NOVEMBER 02nd, 2007.

P.C.:

1. Admit. Advocate for the respondent waives service. Taken up for hearing forthwith.

2. By the impugned order dated 23rd October, 2007 the learned trial judge has declined to grant ad-interim relief in favour of the appellant-plaintiff.

3. The appellant-plaintiff claims to be the owner of the suit property on the basis of registered Sale Deed. In paragraph No.3 of the impugned order the learned trial Judge has observed thus:

> "Merely because they had purchased the suit property it will not establish that the Defendant was not in possession of certain

land of the said property. Therefore, at present in the absence of any convincing material on record to show that the Defendant was not in possession of the suit property, passing injunction amounts to dispossess the Defendant".

4. The perusal of the impugned order shows that ad-interim relief has been refused only on the aforesaid ground. It was the duty of the learned Judge to peruse the material produced by the plaintiff and thereafter to record a prima facie finding on the question whether the plaintiff has established its possession over the suit property. In my view, the approach of the learned trial Judge is completely erroneous and only on that ground the impugned order deserves to be quashed and set aside. The learned trial Judge will have to hear the prayer for ad-interim relief afresh.

5. Hence, I pass the following order:

(i) The impugned order dated 23rd October, 2007 is quashed and set aside.

(ii) The learned trial judge will hear the prayer for ad-interim relief afresh in the light of

observations made in this order.

(iii) All contentions of the parties on merits of the pending Notice of Motion and suit are expressly kept open.

(iv) The trial Court will consider the prayer of ad-interim relief expeditiously.

(v) Parties and the learned trial Judge to act upon an authenticated copy of this order.

JUDGE